Office - Supreme Court, U.S.
FILED
NOV 23 1983
ALEXANDER L. STEVAS,
CLERK

NO. 83-701

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

LAREDO JUNIOR COLLEGE, et al.,

Petitioners,

vs.

ALEJANDRO PEREZ,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

David T. Lopez
David T. Lopez & Assoc.
7660 Woodway - Suite 250
Houston, Texas 77063
(713) 266-5536

Attorneys for Respondent

TABLE OF CONTENTS

	Page
Table of Authorities.....	ii
Argument.....	1
Conclusion.....	4
Certificate of Service.....	5

TABLE OF AUTHORITIES

Cases

Delaware State College vs. Ricks, 449 U.S. 250 (1980)..... 3, 4

Perez vs. Laredo Junior College, 706 F.2d 731 (5th Cir. 1983)..... 2

Constitutional Provisions

U.S. Const. Amendment XIV..... 2

Statutes

42 U.S.C. §1983..... 2

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1983

No. 83-701

LAREDO JUNIOR COLLEGE, et al.,

Petitioners,

vs.

ALEJANDRO PEREZ,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petition should be denied. It is utterly without merit.

The Petitioner (hereafter, for clarity, "the College") proposes to present the question of whether the Fifth Circuit erred in reversing the trial court's granting of summary judgment on Respondent's (Dr. Perez's) second claim for relief.

In his second claim, Dr. Perez complained that other faculty members of the college, similarly situated, were being paid for doctoral degrees outside their teaching areas, while he was not. He alleged this to be a continuing denial of equal treatment actionable under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

The Fifth Circuit held that summary judgment was not appropriate because the College had merely denied the allegation, but not negated it by deposition or affidavit, and because the summary judgment evidence did not conclusively resolve the material issue of fact. Perez vs. Laredo Junior College, 706 F. 2d 731, 734 (5th Cir. 1983). The Fifth Circuit remanded to the trial court for resolution of the factual issue. 706 F. 2d at 735.

Whether or not a motion for summary judgment was providently granted does not

present an issue of significance to this Court, particularly where the matter has been returned to the trial court for appropriate consideration.

Nor does this procedural decision provide a base for the College's far reaching and unfocused discourse on the propriety of continuing violations after Delaware State College vs. Ricks, 449 U.S. 250 (1980). In Ricks, this Court recognized the manifold circumstances which can be presented in employment claims and stated: "The application of the general principles discussed herein necessarily must be made on a case-by-case basis." 449 U.S. at 258 n. 9.

With respect to the concept of continuing violation, this Court noted in Ricks that the employee in that case did not identify alleged discriminatory acts that continued within the applicable limitations period. 449 U.S. 257.

The Fifth Circuit considered the College's argument with respect to Ricks and concluded that Dr. Perez had specified allegedly discriminatory acts which on the basis of the summary judgment evidence could not be said not to have continued within the applicable period.

Nothing in the Fifth Circuit decision is inconsistent either with Ricks or with generally accepted application of the continuing violation principle.

Conclusion

The petition is so wanting in merit as to border on the frivolous. It must be denied.

Respectfully submitted,

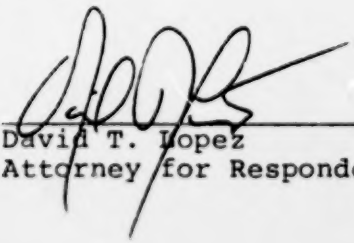
David T. Lopez
Attorney for Respondent
David T. Lopez & Assoc.
7660 Woodway - Suite 250
Houston, Texas 77063
(713) 266-5536

DTL/af
11/18/83

CERTIFICATE OF SERVICE

I, the undersigned member of the Bar of the United States Supreme Court, certify in compliance with Rule 28.3 that three copies of the foregoing brief were served on this 21st day of November, 1983, on the attorney of record for petitioner by placing them in the United States mail, postage prepaid, addressed to his last known mailing address, as follows:

Horace C. Hall III, Esquire
Hall & Sames
P.O. Box 207
Laredo, Texas 78040



David T. Lopez
Attorney for Respondent

(THIS PAGE INTENTIONALLY LEFT BLANK)